No. 12114

In the United States
COURT OF APPEALS
for the Ninth Circuit

MICHIGAN MILLERS MUTUAL FIRE INSURANCE COMPANY, a corporation,

Appellant,

v.

GRANGE OIL COMPANY OF LINN AND BENTON COUNTIES, a co-operative corporation,

Appellee.

Appeal from a Judgment of the District Court of the United States for the District of Oregon.

HONORABLE CLAUDE MCCOLLOCH, *Judge.*

BRIEF OF APPELLEE

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BRIEF OF APPELLEE

JURISDICTION

Appellant has stated the basis for the jurisdiction of this Court accurately. Appellee, therefore, adopts the Statement of appellant as its own.

STATEMENT OF FACTS

This is an appeal from a judgment for appellee in an action to recover the proceeds of a fire insurance policy.

Determination of this case will involve the construction of the Standard Provisional Stock Form, which is attached to the fire insurance policy issued by appellant to appellee. For the convenience of the Court a copy of this form is set forth as Appendix A to this brief. The form will be referred to herein by its initial letters, i.e., "S.P.S.F."

Appellee is a cooperative corporation organized for the mutual benefit of its members in marketing crops, including seed and feed. As part of its business it operated a seed processing and cleaning plant at Monroe, Oregon (Tr. 76). For the sake of convenience appellee will be referred to hereafter as "Co-op." Appellant is a mutual fire insurance company duly qualified to write policies of fire insurance in the State of Oregon. Appellant will be referred to hereafter as "Michigan."

Michigan issued its five-year provisional stock fire insurance policy (Pl. Ex. 1) on May 1, 1943. Before the occurrence of any of the events which are relevant to this case, the policy was assigned to Co-op with the consent of Michigan. The policy covered and insured against fire the contents of Co-op's frame warehouse and seed-cleaning plant at Monroe, Oregon, to the limit of $145,000 for any one fire. The building is designated in the policy as "Plant No. 2." (Item No. 2, Amended Schedule Endorsement, Pl. Ex. 1.)

Michigan's policy differs from the ordinary policy of fire insurance in that it is designed to provide coverage for a fluctuating stock of goods in such a manner that the goods covered will be fully insured at all times to

the limit of liability provided in the policy, without their being over-insured at any time. Cf. *Federal Intermediate Credit Bank of Baltimore v. Globe-Rutgers Fire Insurance Company,* 7 F. Supp. 56, 58-59 (D. Md. 1934). Credit is advanced for the annual premiums because it is impossible to determine the amount of the property at risk until the end of the policy year. Only a "down payment" or "provisional premium" based on a "provisional amount" of insurance equaling 25 per cent of the limit of liability in the policy is payable at the beginning of the policy year (Tr. 125). The balance of the premium is payable upon the anniversary of the policy or at such time as the policy is canceled or otherwise terminated (S.P.S.F., Sec. 7).

By the terms of the policy Co-op agreed to send to Michigan each month a report of the value of goods on hand at the close of business on each Saturday of the month and to include in such report a statement of the amount of specific or nonprovisional insurance on the goods covered by the policy (S.P.S.F., Sec. 3). The premium earned under the policy was to be computed on the average of the values thus reported by Co-op except that no premium was to be charged on any "value" protected by specific or nonprovisional insurance (S.P.S.F., Sec. 7).

On January 9, 1947, a fire destroyed goods of Co-op in Plant No. 2 of a value of $121,410.31. At that time the amount of specific or nonprovisional insurance in effect was $33,333.33. Since the loss was well within the limits of liability of the policy, Co-op demanded that

Michigan pay to it the difference between the amount of the loss and the amount of specific insurance covering the goods destroyed, *i.e.,* the sum of $88,076.98—less, of course, the amount of salvage.

Soon after the fire it developed that Co-op had inadvertently reported during the months of August, September, October and November of 1946 that it had in effect $50,000 of nonprovisional insurance on the goods in Plant No. 2, although at the time of each report it actually had only $33,333.33 of such insurance. The error was completely innocent and arose through a misunderstanding between Co-op and the agent for the specific insurers as to the amount of specific insurance furnished to cover the goods in Plant No. 2 (Tr. 82-121).

Co-op made due proof of loss and has tendered and offered to pay to Michigan whatever premiums may be due. Michigan has paid to Co-op the amount of $70,-966.89, which amount, after adjustment for salvage, represents the difference between the value of the goods destroyed and the amount of specific insurance inadvertently *reported* in the month of November, 1946. Michigan has at all times refused to pay to Co-op the difference between the value of the goods destroyed and the *actual* amount of nonprovisional insurance in effect on the date of the loss, an amount of $88,076.98. Co-op brought this action to recover the sum of $16,356.20, which, after adjustment for salvage, is the difference between $88,076.98 and the amount actually paid by Michigan.

In its pleadings, at the pretrial conference and at the trial below, Michigan raised five principal defenses to this action. Two of its defenses were based upon the formula contained in S.P.S.F. Section 5 for computing the amount of insurance in effect at the time of the loss. Section 5 reads as follows:

> "The amount of Insurance under this form, at any time, at any location described in the 'Schedule Endorsement', shall be determined by following the formula set forth in Sections 5A, 5B, 5C and 5D.
>
> "Section 5A. As of the time at which insurance in force is to be determined, ascertain the value, as defined in Paragraph 4, in such location.
>
> "Section 5B. Deduct from this value the amount of any non-provisional insurance against the hazards covered hereunder on said stock.
>
> "Section 5C. If through error, omission or otherwise the statement of value last filed by insured in accordance with the provisions of Paragraph 3 shall be less than the actual value as ascertained upon the same Saturdays for which said statement of value was filed, the amount as determined by Sections 5A and 5B shall be further reduced by the difference between the average of value so filed (including estimated amount, if any) and the average of actual values as ascertained for the same Saturdays.
>
> "Section 5D. 1. If the amount determined by Sections 5A, 5B and 5C is less than the 'Limit of Insurance' named in the 'Schedule Endorsement', at such location, the amount thus determined shall be the 'Amount of Insurance under this form'.
>
> "2. If the amount determined by Sections 5A, 5B and 5C is equal to or greater than the 'Limit of Insurance' named in the 'Schedule Endorsement' at such location, the amount of the 'Limit of Insur-

> ance' so named shall be the 'Amount of Insurance under this form'."

The parties agreed that the "value" of the stock destroyed within the meaning of Section 5A was $121,-410.31. Michigan, however, contended that the "amount of nonprovisional insurance" to be deducted in accordance with Section 5B was the amount of such insurance last *reported,* not the amount *actually in effect* at the time of loss (Tr. 34-35). Co-op contended that the "amount of nonprovisional insurance" referred to was the amount in effect at the time of the loss.

Michigan contended in the alternative that Section 5C should be so construed as to permit it to deduct from the value of the goods destroyed the amount of Co-op's error in reporting specific insurance. It contended that wherever the word "value" is used in Section 5C it should be taken to mean "value of stock less amount of nonprovisional insurance" (Tr. 33-34). Co-op contended that the language of Section 5C was unambiguous and that construing "value" to refer to anything but the value of stock would be contrary to the express terms of the policy.

Michigan's third defense was based upon the language of S.P.S.F., Section 3, which reads as follows:

> "The insured expressly agrees to file with this insurer, or its designated agent, after the close of the insured's business upon the last Saturday of each month, and before a loss shall have occurred, a true statement in writing of the value (as defined in Paragraph 4) of the stock covered hereunder at each location described in the 'Schedule Endorse-

ment', as of the close of business on each Saturday of such month; and, if the insured so elect, such an amount in addition thereto as the insured shall estimate as sufficient to cover errors or omissions in ascertaining such value; and the insured shall also include in such statement the amount of any non-provisional insurance on said stock against the hazards covered hereunder."

Michigan contended that Co-op's agreement to file statements constituted a promissory warranty and that the inadvertent error in reporting the amount of non-provisional insurance constituted a breach of warranty which relieved it from liability (Tr. 10-13, 31-32). Co-op contended that the agreement was not a warranty because it was not stipulated that it be such in the manner required by the statutes and the decisions of the State of Oregon and therefore was only a simple covenant.

Michigan's fourth defense was based upon the language of S.P.S.F., Sections 7 and 8, which read as follows:

"7. The premium earned under this policy shall be determined and an adjustment thereof made on each anniversary date hereof, or upon termination or cancellation of this policy based on the average of values filed with this insurer, or its designated agent, as required in Paragraph 3; but no premium shall be charged on any values in excess of the amount named as the 'Limit of Liability Under This Policy', nor on any value protected by non-provisional insurance against the hazards covered hereunder reported in accordance with Paragraph 3.

"8. It shall be the privilege of the insured to make any changes desired by him in the last previously filed statement required in Paragraph 3 but such

changes shall not be effective unless made in writing and filed with this insurer or its designated agent before a loss shall have occurred."

Michigan contended that the quoted sections precluded it from collecting a premium for the amount of specific insurance over-reported and, therefore, it had received no consideration for the coverage claimed by Co-op (Tr. 16-18, 35-36). Co-op denied that the quoted sections precluded Michigan from collecting the full premium due it and contended that Michigan could collect the balance of its premium in any event in an action for breach of the promise to file statements contained in Section 3, even though such breach was inadvertent.

As its last defense Michigan contended that by reason of Co-op's inadvertent error in reporting specific insurance, Co-op was estopped to claim that it had less insurance on Plant No. 2 at the time of the loss than it reported in the four preceding months (Tr. 13-15, 17). Co-op contended, *inter alia,* that it was not estopped because its error was an innocent one and because Michigan had taken no substantial action in reliance thereon.

Following trial on May 28, 1948, the matter was submitted to the court on briefs and oral argument. After full consideration of the matter the court entered judgment for Co-op on September 20, 1948, in the principal amount of $16,356.20, together with interest and costs and attorney's fees in the amount of $1500.

SUMMARY OF ARGUMENT

While Michigan has not made the matter entirely clear, insofar as we are able to ascertain there is only one issue remaining in this case on this appeal: Does S.P.S.F., Section 5C, permit Michigan to deduct from the amount of Co-op's loss the amount of Co-op's error in over-reporting nonprovisional insurance? Specifically, the issue is whether the word "value" wherever used in S.P.S.F., Section 5C, may be construed to mean "value of stock less amount of non-provisional insurance."

Michigan now concurs in Co-op's construction of S.P.S.F., Sections 5A and 5B, which read as follows:

> "5. The amount of Insurance under this form, at any time, at any location described in the 'Schedule Endorsement', shall be determined by following the formula set forth in Sections 5A, 5B, 5C and 5D.
>
> "Section 5A. As of the time at which insurance in force is to be determined, ascertain the value, as defined in Paragraph 4, in such location.
>
> "Section 5B. Deduct from this value the amount of any non-provisional insurance against the hazards covered hereunder on said stock."

Michigan has abandoned its contention that the words "amount of any non-provisional insurance" used in Section 5B mean "amount of non-provisional insurance last reported" (App. Br. page 13, line 3). Michigan now agrees that Section 5B requires that from the value of the goods destroyed, *i.e.*, $121,410.31, the amount of specific insurance *actually* in effect at the date of the loss must be deducted, *i.e.*, $33,333.33. The difference is $88,076.98 which, less agreed adjustments for salvage,

is the amount for which Co-op contends Michigan became liable because of the fire.

Section 5C reads as follows:

> "If through error, omission or otherwise the statement of value last filed by insured in accordance with the provisions of Paragraph 3 shall be less than the actual value as ascertained upon the same Saturdays for which said statement of value was filed, the amount as determined by Sections 5A and 5B shall be further reduced by the difference between the average of value so filed (including estimated amount, if any) and the average of actual values as ascertained for the same Saturdays."

Michigan apparently contends that the word "value" wherever used in Section 5C can and should be construed to mean "value of goods less amount of specific insurance." Under such a construction Michigan would be entitled to deduct from $88,076.98 the sum of $16,666.67 which is the amount of Co-op's error in reporting nonprovisional or specific insurance. Co-op contends that the word "value" as used in Section 5C and throughout the entire policy clearly refers only to the value of Co-op's stock of goods. The word "value" must be given the meaning provided in the policy definition of the word "value" contained in S.P.S.F., Section 4.

> "It is further agreed that wherever the term '*value*' is used in this form it shall apply in the manner set forth in section (4a), (4b) and (4c) below as the location and at the time when such ascertainment of value is required by the conditions of this policy.
>
> "(4a) The *value of stock,* other than that manufactured by the insured, held for local or retail sale

or for manufacturing purposes shall be the cost of replacing such stock;

"(4b) The *value of stock,* other than that manufactured by the insured, held for shipment shall be the established cash shipping value of stock of like grade and quality;

"(4c) The *value of stock* manufactured by the insured shall be the average carlot selling price." (Italics supplied)

"Value" as defined in Section 4 means value of stock.

The language of Section 5C is clear and unambiguous and under well settled principles of insurance law must be given effect as written. Even where there is an ambiguity in an insurance policy it is well settled that the ambiguity must be resolved in favor of the insured. To rewrite the unambiguous language of Section 5C after a loss so as to restrict the rights of Co-op would be to depart from the most fundamental principles of insurance law.

Michigan has completely abandoned its contention that Co-op is estopped to claim that it is entitled to the "amount of insurance" which the policy provides shall be in force. Michigan has not mentioned the defense based on estoppel in its brief.

Michigan also has abandoned its defense based upon the premise that it is unable to collect premiums against the amount of specific insurance over-reported. While Michigan still contends that it is unable to collect the full premium due it, it has made no effort to connect its professed disability with any legal theory of defense.

Co-op contends that Michigan has an adequate right under the policy to collect premiums for the full amount of the risk which it carries.

For practical purposes, Michigan also has abandoned its defense based upon the theory that Co-op has been guilty of breach of a promissory warranty. While Michigan still contends that the agreement contained in S. P. S. F., Section 3, constitutes a warranty, it concedes that any breach of the "warranty" did not void the contract and that its liability in any event must be determined according to the "agreement between the parties" (App. Br. 32). The "agreement" referred to can only be S. P. S. F. Section 5C. In order to dispel the confusion which might arise if its agreement were considered to be a warranty, Co-op will demonstrate that the agreement cannot be construed as a warranty under the statutes and decisions of the State of Oregon.

Michigan has admitted that Co-op's error in reporting nonprovisional insurance was completely innocent and untainted with fraud. Yet Michigan argues that this Court should apply to this case the principles governing cases in which there is fraudulent mis-reporting —apparently on the theory that such an extension of the law of fraudulent misrepresentations would have a prophylactic effect which would be beneficial to companies issuing the provisional type policy. Co-op contends that it cannot be penalized for a fraud where it has committed no fraud. The first paragraph of the standard terms and conditions on page 2 of the policy provides a remedy for Michigan in the event of fraud (Pl. Ex. 1). Since

Michigan has made no attempt to bring itself within this paragraph, Co-op is entitled to the full amount of its insurance.

PROPOSITION OF LAW I

By the Terms of Its Policy Michigan Is Liable for All of Co-op's Loss Not Protected by Nonprovisional Insurance.

POINTS AND AUTHORITIES

1. When the terms of an insurance policy are clear and unambiguous, the policy must be given effect as written.

Smith v. Germania Fire Ins. Co., 102 Or. 569, 578, 202 Pac. 1088, 1091 (1922);

Massachusetts Mut. Life Ins. Co. v. Pistolesi, 160 F. (2d) 668 (C.C.A. 9th 1947);

Bradley v. Prudential Ins. Co. of America, 70 F. (2d) 988, 989 (C.C.A. 9th 1934);

Kaifer v. Georgia Casualty Co., 67 P. (2d) 309, 310 (C.C.A. 9th 1933);

Canton Ins. Office v. Independent Transp. Co., 217 Fed. 213 (C.C.A. 9th 1914).

2. When the terms of an insurance policy are ambiguous, the ambiguity must be resolved against the underwriter.

Bennett v. Metropolitan Life Ins. Co., 173 Or. 386, 411, 145 P. (2d) 815, 825 (1944);

Yoshida v. Security Ins. Co., 145 Or. 325, 334, 26 P. (2d) 1082, 1086 (1933);

Purcell v. Washington Fidelity National Ins. Co., 141 Or. 98, 103, 16 P. (2d) 639, 641 (1932);

Aschenbrenner v. United States Fidelity and Guaranty Co., 292 U.S. 80, 84, 54 Sup. Ct. 590, 592 (1934);

Stipcich v. Metropolitan Life Ins. Co., 277 U.S. 311, 322, 48 Sup. Ct. 512, 515 (1928);

New York Life Ins. Co. v. Hiatt, 140 F. (2d) 752 (C.C.A. 9th 1944);

Swasey v. Massachusetts Protective Assn., 96 F. (2d) 265 (C.C.A. 9th 1938).

3. The language of S.P.S.F., Section 5C, is clear and unambiguous and does not permit Michigan to penalize Co-op for its innocent error in reporting the amount of nonprovisional insurance.

ARGUMENT

Michigan's position in this case is indeed a novel one for an insurance company. Michigan, in effect, is asking this Court to disregard the express language of its policy on the ground, *inter alia,* that the policy as now written "violates the theory underlying reporting forms of insurance." To so depart from the language of the policy would violate rules for the construction of insurance policies long and well established in both this Court and in the Supreme Court of the State of Oregon. Since the jurisdiction of this Court is based upon diversity of citizenship the outcome of this case must depend upon the law of the State of Oregon. *Erie Railroad Co. v. Tomkins,* 304 U.S. 64, 58 Sup. Ct. 817 (1938).

When the language of an insurance policy is clear

and unambiguous, the policy must be given effect as written. The Supreme Court of Oregon in construing a policy has held:

> "5. The terms and conditions of the policy under consideration are not vague, nor ambiguous, but are clear and definite. Therefore, this court cannot resort to construction, nor can we write a new contract of insurance as between the parties." *Smith v. Germania Fire Ins. Co.,* 102 Or. 569, 578, 202 Pac. 1088, 1091 (1922).

This Court said in *Bradley v. Prudential Ins. Co. of America,* 70 F. (2d) 988 (1934) at page 989:

> "(2, 3) Policies of insurance, where the terms are clear and unambiguous, must be enforced like other contracts according to terms which have been used therein by the parties."

If the policy in this case were ambiguous, the ambiguity would have to be resolved against Michigan. In *Yoshida v. Security Ins. Co.,* 145 Or. 325, 26 P. (2d) 1082 (1933), the Oregon Supreme Court in speaking of the policy there involved said:

> "The instrument under consideration was prepared by the insurance company and therefore all ambiguities must be resolved against it."

In *New York Life Ins. Co. v. Hiatt,* 140 F. (2d) 752 (1944), this Court said:

> "(1-3) The rules applied in the construction of insurance contracts are well understood. Like any contract, the policy is to be read as a whole, and if possible the several parts should be reconciled and given effect. 14 Cal. Jur. 440, § 22. Because contracts of insurance are not the result of negotiation

and are generally drawn by the insurer, any uncertainties or ambiguities therein are resolved most strongly in favor of the insured."

In *Aschenbrenner v. United States Fidelity and Guaranty Co.,* 292 U.S. 80, 84, 54 Sup. Ct. 590, 592 (1934), the Supreme Court of the United States has held:

> "The phraseology of contracts of insurance is that chosen by the insurer and the contract in fixed form is tendered to the prospective policyholder who is often without technical training, and who rarely accepts it with a lawyer at his elbow. So if its language is reasonably open to two constructions, that more favorable to the insured will be adopted, *Stipcich v. Metropolitan Life Insurance Co.,* 277 U.S. 311, 322, 48 S. Ct. 512, 72 L. Ed. 895; *Mutual Life Insurance Co. v. Hurni Packing Co.,* 263 U.S. 167, 174, 44 S. Ct. 90, 68 L. Ed. 235, 31 A.L.R. 102; and unless it is obvious that the words are intended to be used in their technical connotation they will be given the meaning that common speech imports."

The extent of the liability of Michigan under its policy depends upon the "amount of insurance" in effect at the time of the loss. Section 5 of the Standard Provisional Stock Form attached to the policy contains a formula for the computation of the amount of insurance in effect at such time. Section 5 reads as follows:

> "The Amount of Insurance under this form, at any time, at any location described in the 'Schedule Endorsement', shall be determined by following the formula set forth in Sections 5A, 5B, 5C and 5D.
>
> "Section 5A. As of the time at which insurance in force is to be determined, ascertain the value, as defined in Paragraph 4, in such location.

"Section 5B. Deduct from this value the amount of any non-provisional insurance against the hazards covered hereunder on said stock.

"Section 5C. If through error, omission or otherwise the statement of value last filed by insured in accordance with the provisions of Paragraph 3 shall be less than the actual value as ascertained upon the same Saturdays for which said statement of value was filed, the amount as determined by Sections 5A and 5B shall be further reduced by the difference between the average of value so filed (including estimated amount, if any) and the average of actual values as ascertained for the same Saturdays.

"Section 5D. 1. If the amount determined by Sections 5A, 5B and 5C is less than the 'Limit of Insurance' named in the 'Schedule Endorsement', at such location, the amount thus determined shall be the 'Amount of Insurance under this form'.

"2. If the amount determined by Sections 5A, 5B and 5C is equal to or greater than the 'Limit of Insurance' named in the 'Schedule Endorsement' at such location, the amount of the 'Limit of Insurance' so named shall be the 'Amount of Insurance under this form'."

The parties agree that the value of stock at the time of the loss, within the meaning of Section 5A was $121,410.31. The parties agree that the amount of nonprovisional insurance in effect at the time of the loss, within the meaning of the provisions of Section 5B was $33,333.33. The parties agree further that the amount of $88,076.98, the difference resulting from the deduction from the value of the goods, in accordance with Section 5B of the amount of nonprovisional insurance is less than the "limit of insurance" within the meaning of

Section 5D. It would seem clear therefore, and Co-op so contends, that Michigan's liability was $88,076.98, less adjustment for salvage.

For some reason not made clear to us, Michigan contends, however, that Section 5C entitles it to a further deduction in computing the amount of insurance. Section 5C as we read the policy has no application to this case. By its terms it applies only to a case where an insured errs in reporting the value of its goods. As now written, Section 5C reads:

> "If through error, omission or otherwise the statement of value last filed by insured in accordance with the provisions of Paragraph 3 shall be less than the actual value as ascertained upon the same Saturdays for which said statement of value was filed, the amount as determined by Sections 5A and 5B shall be further reduced by the difference between the average of value so filed (including estimated amount, if any) and the average of actual values as ascertained for the same Saturdays."

The "Statement of value" referred to is obviously the "true statement in writing of the value of the stock" mentioned in Section 3. Michigan would have this Court rewrite Section 5C by inserting the words in italics below:

> "If through error, omission, or otherwise, *the value of goods less the amount of specific insurance reported in* the statement of value last filed by insured in accordance with the provisions of paragraph 3 shall be less than the actual value *less the actual amount* as ascertained upon the same Saturdays for which said statement of value was filed, the amount as determined by Section 5A and 5B

shall be further reduced by the difference between the average of value so filed (including estimated amounts if any) and the average of actual values as ascertained for the same Saturdays, *and by the difference between the average amount of provisional insurance reported upon the same Saturdays and the actual amount of insurance in effect on such Saturdays.*" (Italics supplied)

There is no ambiguity in the provisions of Section 5C. It is completely clear that when the word "value" is used in that section the word refers to the value of stock and not to the amount of specific insurance or to the value of stock less the amount of specific insurance. In section 4 of the Standard Provisional Stock Form "value" is expressly defined as follows:

"It is further agreed that wherever the term *'value'* is used in this form it shall apply in the manner set forth in section (4a), (4b) and (4c) below as the location and at the time when such ascertainment of value is required by the conditions of this policy." (Italics supplied)

Sections (4a), (4b) and (4c) are as follows:

"(4a) The *value of stock,* other than that manufactured by the insured, held for local or retail sale or for manufacturing purposes shall be the cost of replacing such stock;

"(4b) The *value of stock,* other than that manufactured by the insured, held for shipment shall be the established cash shipping value of stock of like grade and quality.

"(4c) The *value of stock* manufactured by the insured shall be the average carlot selling price." (Italics supplied)

It will be seen that they refer only to the value of stock. Hence, "value" wherever used in the policy is synonymous with "value of stock".

The phrase "average of value" used in Section 5C is used again in Section 7. In Section 7 it is provided that premiums shall be determined based upon the "average of values filed . . . but no premium shall be charged . . . on any value protected by nonprovisional insurance . . ." In Section 7 it is very clear that when the policy speaks of "average of values" it refers to the average of the value of the stock on hand on pertinent days. Otherwise it would not have been necessary to provide that no premium would be charged on a "value" protected by nonprovisional insurance. Surely Michigan did not intend that the words "average of value" as used in Section 5C should have a meaning different from the very same words when used in Section 7.

The other sections in the form in which the word "value" is used are Section 3 and Sections 5A and 5B. In Section 3 the word "value" is used with reference to the worth of a stock of goods, while the word "amount" is used with reference to the quantity of nonprovisional insurance in force. Michigan concedes in its brief that the word "value" as used in Sections 5A and 5B refers to the value of stock. See first three lines of calculation contained in the third full paragraph of page 35 of Michigan's brief. There is nothing to indicate that "value" has a different meaning in Section 5C than in Section 3 or Sections 5A and 5B. Rather, it is clear that *wherever* in the policy Michigan used the word "value"

it used it consistently with the policy definition contained in Section 4.

Michigan's forms "Report of Actual Cash Values", furnished to Co-op by Michigan for mutual convenience are, of course, not part of the policy and do not control its construction (Def. Exs. 19, 20 and 22). However, use of the word "value" in that form as synonymous with "value of stock" is consistent with the policy definition of value and corroborates such an interpretation of the word as it is used in 5C. The statement on such forms included by Michigan for subscription by its insured reads as follows:

> "Following is a true statement of the actual cash values of all stocks located at the stations and in the buildings designated in the first column at the close of business upon each Saturday for the month of ....., 19....., as required under Paragraph 3 of the form attached to our Provisional Policies, and all Non-Provisional Fire Insurance on such stock.
>
> "We understand that if the average of the values entered in this statement is less than the average of actual cash values for the same days for which this statement is filed, the difference, in case of loss, shall be deducted from the actual cash value at the time of such loss, and the remainder (after deducting Non-Provisional Insurance, if any) shall constitute the actual amount of insurance in force under all policies covering under the Provisional Form, subject, however, to all of the conditions and limitations of such policies."

In the first paragraph an insured states that it is making a true statement of the actual cash *values of stock*. In the second paragraph the single word "values"

is used as a shorthand expression for the phrase "values of all stocks" used in the first paragraph. The insured agrees that if the average of values reported is less than the average of actual cash values on the days for which values are reported, the difference, in the event of loss, shall be deducted from the actual cash value at the time of loss. From the result "nonprovisional insurance" shall be deducted to obtain the actual amount of insurance in force. Here again it would not be provided that the amount of nonprovisional insurance be deducted if "value" was intended to mean value of stock less amount of insurance. It is not specified that the *reported* amount of nonprovisional insurance shall be deducted. It is clear that within the meaning of this paragraph it is intended that the *actual* amount of nonprovisional insurance be deducted. The second paragraph quoted above is obviously intended to paraphrase the provisions of Section 5C of the Standard Provisional Stock Form. In drafting such paraphrasization it is clear that Michigan did not intend the word "value" to mean value of stock less amount of insurance. It is clear that Michigan had no such intention in drafting the provisions of Section 5C.

Michigan relies upon the warning in the lower left-hand corner of the form: "Under-reporting means under-insurance." "Under-reporting," however, must refer to reporting of the value of stock. Michigan is here relying upon an *over-reporting* of nonprovisional insurance as the basis for its contention that Co-op was under-insured.

Michigan relies upon the letters of Mr. N. J. Sankela,

Michigan's assistant branch manager, set forth on pages 48 and 49 of the transcript. In both of these letters, however, Mr. Sankela used the word "value" to refer to the value of stock and not to the value of stock less amount of specific or nonprovisional insurance.

Construing the word "value" to mean value of stock less amount of specific insurance requires such a departure from the common meaning of the word and from the policy definition that Michigan has not been able to use the word consistently in its brief in the sense that it professes to construe it (App. Br. 8, 9, 10, 21, 22, 30, 36).

Michigan has obviously used great care in the preparation of its Standard Provisional Stock Form. While in the process of preparing this form it probably considered very carefully whether or not it should impose a penalty or forfeiture because of an inadvertent error in the reporting of an amount of specific insurance. There is good reason for Michigan to have concluded that it should insist on complete accuracy in the reporting of the value of a stock of goods while being less strict about the amount of specific insurance. The amount of specific insurance does not fluctuate widely like the value of stock and can, of course, be readily and easily checked. Michigan is a specialist in dealing with insurance but probably knows relatively little about the feed and seed business.

Michigan argues that applying the formula contained in Section 5 as written would be very unfair to it in that it is precluded by Section 7 from collecting a pre-

mium on any other basis than the reports furnished by Co-op pursuant to Section 3. Applying Section 7 to the present case, Michigan contends that in computing the premium a deduction of $50,000 for the amount of nonprovisional insurance reported for the months of August through November, 1946, must be made from the value of the stock of goods reported during those months. It follows, Michigan maintains, that Michigan earned a premium only for an amount of insurance equal to the sum that it has already paid plaintiff.

The argument of Michigan is hypertechnical and requires a strained and unnatural construction of Section 7. Nothing in Section 7 precludes Co-op from changing its report. Section 8, upon which Michigan relies, seems designed to give an assured the right to reduce its premiums in the event that it has overvalued its stock of goods as it is permitted to do under the provisions of Section 3.

There is no reason for laboring over the construction of Sections 7 and 8, however, for Michigan clearly has the right to collect whatever premium may be due it under the provisions of Section 3. In Section 3 Co-op agreed to report the true amounts of nonprovisional insurance on the designated days. Since it failed to report the amounts accurately, Michigan has a remedy for the nonperformance of Co-op's promise by way of action for breach of contract. The damages will, of course, be the difference between the premium earned had the report been accurate and the premium on the basis of the report as submitted. RESTATEMENT, CONTRACTS, Section 329.

In this case it will not be necessary for Michigan to bring an action, for Co-op has tendered and will pay whatever premium is due. So in the normal case an insured upon discovering an honest error will pay whatever premium Michigan tells it is due. This case must not be confused with fraud cases in which entirely different rules apply.

Michigan has likened Co-op's monthly reports to "orders" for insurance. Actually the reports bear no resemblance whatever to orders. To illustrate, suppose that an assured on the 10th day of a particular month reports that on each of the four preceding Saturdays it had a value of goods on hand in the amount of $200,000 and had specific insurance in effect in the amount of $100,000. On the day that it renders its report it cancels its specific insurance without notifying Michigan. (Nothing in the policy requires an insured to notify Michigan when it cancels specific insurance.) Providing that the value of the goods on hand is within the limits of liability of the policy, the assured immediately will have insurance in force in the amount of $200,000 (Tr. 74-75). The assured can hardly be said to have "ordered" $200,000 of insurance by filing its report.

Since the "Standard" Provisional Stock Form used by Michigan is peculiar to Michigan (Tr. 138), it is not surprising that there are no decisions directly controlling the outcome of this case. None of the cases cited by Michigan in its brief and none that Co-op has found deals with errors in the reporting of the amount of specific insurance. Each of the mis-reporting cases cited by

Michigan involves either fraudulent or deliberate misreporting of the value of a stock of goods. It is highly misleading to attempt to apply those cases, or portions of the decisions thereof, to this case which involves an inadvertent error with respect only to nonprovisional insurance.

In *Atlantic Fruit Company v. Hamilton Fire Insurance Company of New York,* 251 N.Y. 98, 167 N.E. 184 (1929), the insured *intentionally* failed to report the value of goods in the manner specified in the policy. In addition the insured *deliberately* left out of its report whole classes of goods. Like our policy, the policy there involved contained a provision that insured should report periodically the values of goods on hand and the amount of specific insurance covering the goods. Rather than having a provision like Section 5C of Michigan's policy, the policy there involved provided that any error or omission in rendering the monthly report of values should not operate to the disadvantage of the insured. The court held that

> " . . . a breach of covenant, so wilful, so substantial and persistent puts an end to the insurance."

After considering the case of *Arnold v. Pacific Mutual Insurance Company,* 78 N.Y. 7 (1879), which held that an error in reporting the routing of a vessel did not vitiate a policy of marine insurance, the court said:

> "We do not need to consider whether there would be a like ruling in this court if the failure to make a report were found to be the result of an excusable mistake. Dicta in the Arnold case, supra,

> at page 13 of 78 N.Y. gives color of support for a less rigorous conclusion. We cannot doubt, however, that forfeiture must follow where the failure to report has been persistent and deliberate."

That case involving the effect of deliberate and wilful omissions of values of goods does not control our case, which deals with the effect of an innocent error in reporting specific insurance.

In *Automobile Insurance Company of Hartford Connecticut v. Barnes Manley Wet Wash Laundry Company,* 168 F. (2d) 381 (C.C.A. 10th 1948), an insurance company brought an action for deceit against its policyholder, a laundry. Plaintiff's policy insured defendant's laundry patrons against loss by fire. The premium was based upon the gross receipts of the laundry. A fire had occurred and plaintiff had satisfied the claims of the persons whose laundry was destroyed. The policy was a reporting type and the jury found specially that assured had wilfully and knowingly and with intent to defraud and deceive misrepresented to the insurer that its gross receipts were substantially less than the actual receipts. The issue before the court was the determination of the measure and amount of damages in an action for deceit. The court held that the insurer was entitled to recover the difference between the risk actually carried and the maximum risk the insurer would have carried had the reports been true. It is clear that the decision has no application to this case. Rather the case suggests to Michigan what its remedy might be in a fraud case.

In *Wallace v. World Fire and Marine Insurance Company,* 70 F. Supp. 193 (S.D. Cal. 1947), *aff'd* 166 F. (2d) 571 (C.C.A. 9th 1948), an insurance company sought to avoid liability on a value reporting policy on the ground that insured had fraudulently misrepresented the value of his stock of goods. The insured had reported only $2000 of property at a time when the actual value was $28,140, or over 14 times the amount reported. The court held that the misrepresentation did not avoid the policy, because under the circumstances it was not material. The "full reporting clause" contained the agreement of the parties as to the effect of an error in reporting the value of the stock of goods.

The court did not set out in its opinion the language of the full reporting clause, so we are unable to determine what degree of similarity there is between the clause involved in that policy and Section 5C of our policy. However, even if the clauses were identical, the *Wallace* case would not control our case because there the error was in reporting *value of stock* and not the amount of specific insurance. It is clear that this Court rested its decision in the *Wallace* case on the language of the policy. Moreover, from the language of the Court in that case it seems quite likely that the record suggested fraud or such gross negligence as to create doubt at least of the assured's good faith. Statements of the court as to the effect of a material misrepresentation or concealment have no relevance to this case, since in our case Michigan has made no effort to avoid the policy on the ground of fraudulent misrepresentation. The decision in our case depends only upon the construction

of the policy and not upon the application of an extrinsic rule of law.

PROPOSITION OF LAW II

The Error in Reporting Did Not Constitute a Breach of Warranty.

POINTS AND AUTHORITIES

1. Co-op's agreement to file statements cannot be construed as a warranty since the agreement was not inserted in the policy in the manner required by the statutes of the State of Oregon.

Or. Comp. Laws Ann., Sec. 101-1801.

2. The agreement cannot be construed as a warranty since the parties have not stipulated that it be such.

Walker v. Firemen's Fund Insurance Co., 114 Or. 545, 559, 234 Pac. 542, 546 (1925);

12 APPLEMAN, INSURANCE LAW AND PRACTICE (1943) 444;

RICHARDS, LAW OF INSURANCE (4th Ed. 1932) 144;

Aetna Ins. Co. v. Rhodes, 170 F. (2d) 111 (C.C.A. 10th 1948);

Spence v. Central Accident Ins. Co., 236 Ill. 444, 86 N.E. 104 (1908);

Business Men's Assur. Co. of America v. Marriner, 223 Mich. 1, 193 N.W. 907 (1923).

3. Whether or not the agreement be construed as a warranty, the outcome of this case will depend upon the

construction of Section 5C of the Standard Provisional Stock Form.

ARGUMENT

We understand Michigan to have abandoned its defense to this action based upon breach of warranty. While Michigan still contends that Co-op's agreement to furnish reports constituted a promissory warranty, Michigan concedes that the result of this case will depend upon the interpretation of Section 5C of the policy, whether or not there has been a breach of warranty. On page 31 of its brief Michigan states:

> "In our case although we firmly believe that the obligation to report truly the value of stock on hand each Saturday in each month and the amount of any non-provisional insurance is a promissory warranty, we agree that the policy is not avoided for the breach of the warranty, except perhaps in a clear case of fraud. In fact, it was not intended when the policy was prepared that an innocent report of values should work a forfeiture . . . .
>
> "So we do not believe that this case may be decided by the simple determination of whether any of the clauses in the policy were promissory warranties.
>
> "The consequences of a breach of the promise or warranty, whether it is material or not, is generally accepted to be the breach of the contract. Here *by the agreement between the parties* it is given a different consequence." (Italics supplied)

The only "agreement" between the parties in Michigan's policy having reference to the effect of an error in reporting is found in Section 5C.

Co-op's promise to furnish reports certainly is not a warranty. Because of Michigan's present view of the case, however, it is not necessary to dwell at great length upon the reasons why the agreement cannot be construed as a promissory warranty. We will endeavor only to remove the confusion which may result in this case from Michigan's insistence on continuing to refer to Co-op's agreement as a warranty.

A warranty is a stipulation in an insurance policy that unless a certain thing be so or happen or be done, the underwriter will not be liable at all on its policy. See *Walker v. Firemen's Fund Insurance Company,* 114 Or. 545, 559, 234 Pac. 542, 546 (1925). A warranty is like a condition precedent in an ordinary contract except that through long usage, an underwriter is completely relieved of liability unless the warranty is exactly and literally complied with. *Buford v. New York Life Insurance Company,* 5 Or. 334 (1874). In an ordinary contract a promise will often be enforced if there has been only substantial performance of the conditions precedent, or if the breach of condition is not material. RESTATEMENT OF CONTRACTS, Secs. 274-279.

The law of warranties grew up around marine insurance, the earliest form of insurance, as it was practiced at Lloyds Coffee House, and was extended to other forms of insurance as they developed. Note, 36 HARV. LAW REV. 597 (1923). Strict enforcement of warranties in most other types of polices was so unfair and so inappropriate that both courts and legislatures soon began to modify the rigors of the law. Oregon, for example,

enacted a statute providing that statements in an application for a policy should be deemed representations, not warranties. O.C.L.A., Sec. 101-131 (1940). A representation differs from a warranty in that an underwriter cannot avoid a policy for misrepresentation unless it can show that the representation was knowingly false, was made with intent that it be relied upon, and was material to the risk. *Waller v. City of New York Ins. Co.,* 84 Or. 284, 294, 164 Pac. 959, 962 (1917).

Oregon also enacted a statute, Or. Comp. Laws Ann., Sec. 101-1801 (1940), which completely precludes Michigan from contending that Co-op's agreement in Section 3 of the Standard Provisional Stock Form constitutes a warranty. After providing the standard conditions to appear in a fire insurance policy, the legislature provided for the inclusion of other conditions as follows:

> "Provisions for other conditions.
>
> "Provided, however, that any fire insurance company, corporation, or association, its officers or agents, may add to such conditions other conditions, provisions, and agreement not in conflict with law, or contrary to public policy; but if such conditions restrict, or abridge the rights of the assured under the policy contract, each restrictive clause must be preceded by a sufficiently explanatory title printed or written in type not smaller than eight-point capital letters. . . ."

Co-op's agreement to furnish reports is not part of the Oregon standard form of fire insurance policy. It was not placed on the first page of the policy, nor was it preceded by an explanatory title in type not less than eight-point capital letters. If construed as a warranty, it

certainly would be a condition restricting Co-op's rights under the policy. It follows that the statute precludes the agreement from being construed as a condition or warranty.

Even if the Oregon statute were not in force, Co-op's agreement could not be construed as a warranty. The universal rule for the contruction of fire policies is that provisions of the policy will not be construed as warranties or conditions unless the parties have stipulated that they be such. See, for example, *Walker v. Firemen's Fund Ins. Co.,* 114 Or. 545, 559, 234 Pac. 542, 546 (1925), where it is said:

> "It has been frequently held that, where a written application states a thing absolutely to be true, and such statement is of a material fact, it will be construed as a warranty, even if the fact should not be material, and this is upon the theory that as both parties have agreed that it should be a warranty, the courts will not disregard a contract to that effect and hold what the parties have thus stipulated a warranty to be a mere representation. But courts are loath to hold that to be a warranty which the parties have not stipulated shall be such . . . "

Similarly, in 12 APPLEMAN, INSURANCE LAW AND PRACTICE (1943), 444, the rule is stated:

> "Warranties are not favored by construction, and it is not error to so instruct the jury. Where the insurer relies upon a breach of warranty as a defense, it will be strictly construed against the company, with a view of avoiding forfeitures on technical grounds. The statement will not, therefore, be construed to be a warranty *unless made so by express agreement in clear and unequivocal language.* If any other possible interpretation or con-

struction is open to the court, it will adopt a more liberal view, and will only construe a statement to be a warranty when no alternative remains." (Italics supplied)

RICHARDS, LAW OF INSURANCE (4th Ed., 1932), states at page 144:

> "Fire, life and accident policies are for the most part explicit in describing what provisions to go to the validity of the contract, and the courts are slow to construe as warranties any others than those so defined, . . . "

Since there is no stipulation, provision or agreement in Michigan's policy that Co-op's agreement to furnish reports shall constitute a condition or warranty, the agreement must be construed as a simple covenant rather than a promissory warranty,—this, even if there were no Oregon statute specifically controlling the matter.

The dicta in *Automobile Insurance Company of Hartford Connecticut v. Barnes Manley Wet Wash Laundry Company,* 168 F. (2d) 381 (C.C.A. 10th 1948), construing the reporting clause there involved as a warranty has no bearing on this case. First, it does not appear that Oklahoma has a statute similar to the portion of O.C.L.A., Sec. 101-1801, quoted above. Second, it was specifically provided in the policy there involved that:

> " . . . any evasion or attempted evasion by the assured in the matter of rendering such reports hereinbefore required, or payment of premium hereunder, shall be an absolute defense to any suit or action brought under this policy."

There is no such provision in the policy involved in this case, nor any words or language of similar import. Similarly, that a reporting clause was called a warranty in *Atlantic Fruit Co. v. Hamilton Fire Ins. Co.,* 251 N.Y. 98, 167 N.E. 184 (1929), cannot affect this case since this case must be determined on the basis of the Oregon law and of the particular provisions of Michigan's policy. In our case, as in *Aetna Ins. Co. v. Rhodes,* 170 F. (2d) 111 (C.C.A. 10th 1948), there is no provision for forfeiture in the event of breach of the agreement to furnish reports. As in the *Aetna* case the agreement cannot be construed as a warranty.

CONCLUSION

Co-op agrees that the type of policy here involved is very useful to persons wishing to insure a fluctuating stock of goods. The advantages to an assured probably compensate for the ten per cent higher premium rate (Tr. 125). Enforcing such policies as written fosters, rather than discourages, the use of such policies, for only if an assured can rely upon the protection which the policy specifies he shall have, is he afforded the relief from insurance worries for which the policy is designed. If Michigan is dissatisfied with its policy as it is presently written, it may for the future change the policy to include whatever provisions it chooses. If it wishes, it may impose a penalty for inadvertent errors in reporting amounts of specific insurance. If it desires, it may provide that failure to furnish completely accurate reports shall constitute a breach of warranty. It has not

done so, however, and can hardly expect this Court to rewrite the contract so as to include penalties or forfeitures not specified or contemplated when the insurance went into effect.

In this case Michigan has not by any act or failure to act on the part of the assured involuntarily been forced to assume a risk that it did not undertake in the first instance to assume. In fact, the limits of liability assumed by Michigan on this very stock of goods was $145,000, an amount far in excess of the amount Co-op is demanding that Michigan pay. Co-op was under no obligation to get additional insurance where the risk and value of the property did not exceed this sum of $145,000. That it did secure a substantial amount of additional insurance reduced the loss of Michigan $33,333, and this below the loss of the $120,656.42 which is substantially $24,000 below the limits of Michigan's risk that it agreed to assume on this property. The element of involuntarily thrusting upon the insurer a risk greater than it agreed to assume is not present in this case.

The District Court entered judgment against Michigan for the balance due Co-op under the contract as written. We submit the judgment was correct and therefore should be affirmed.

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WEATHERFORD AND THOMPSON,
HUGH L. BIGGS,
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HART, SPENCER, MCCULLOCH, ROCKWOOD AND DAVIES,
Attorneys for Appellee.

APPENDIX A

STANDARD PROVISIONAL STOCK FORM ANNUAL SETTLEMENT

Selling Price Basis.

1. On stock consisting of grain and seeds, stock in process, finished stock and all other merchandise and supplies, not otherwise insured and not more hazardous, handled or used by the insured in their business, their own, or held by them in trust, or on storage if in case of loss the insured is legally liable therefor; all while contained in the building or buildings as located and described in the "Schedule Endorsement" attached hereto, or while in or on cars or trucks within 100 feet of said buildings, except when carrier is liable.

2. It is understood that any specific amount of insurance named in this policy, or in certificates issued hereunder, and the first and subsequent annual premiums to be paid therefor are only provisional; and that the amount of insurance hereunder at any time on the stock described in Paragraph 1 shall be determined by the procedure outlined in Paragraph 5.

3. The insured expressly agrees to file with this insurer, or its designated agent, after the close of the insured's business upon the last Saturday of each month, and before a loss shall have occurred, a true statement in writing of the value (as defined in Paragraph 4) of the stock covered hereunder at each location described in the "Schedule Endorsement", as of the close of business on each Saturday of such month; and, if the insured so elect, such an amount in addition thereto as the insured shall estimate as sufficient to cover errors or omissions in ascertaining such value; and the insured shall also include in such statement the amount of any non-provisional insurance on said stock against the hazards covered hereunder.

4. It is agreed that wherever the term "Stock" is used in this form it shall be held to include all property covered hereunder as described in Paragraph 1 hereof. It is further agreed that wherever the term "Value" is used in this form it shall apply in the manner set forth in sections (4a), (4b) and (4c) below at the location and at the time when such ascertainment of value is required by the conditions of this policy:

   (4a) The value of stock, other than that manufactured by the insured, held for local or retail sale or for manufacturing purposes shall be the cost of replacing such stock.

   (4b) The value of stock, other than that manufactured by the insured, held for shipment shall be the established cash shipping value of stock of like grade and quality.

   (4c) The value of stock manufactured by the insured shall be the average carlot selling price.

5. The amount of Insurance under this form, at any time, at any location described in the "Schedule Endorsement", shall be determined by following the formula set forth in Sections 5A, 5B, 5C and 5D.

   Section 5A. As of the time at which insurance in force is to be determined, ascertain the value, as defined in Paragraph 4, in such location.

   Section 5B. Deduct from this value the amount of any non-provisional insurance against the hazards covered hereunder on said stock.

   Section 5C. If through error, omission or otherwise the statement of value last filed by insured in accordance with the provisions of Paragraph 3 shall be less than the actual value as ascertained upon the same Saturdays for which said statement of value was filed, the amount as determined by Sections 5A and 5B shall be further reduced by the difference between the average of value so filed (including estimated

amount, if any) and the average of actual values as ascertained for the same Saturdays.

Section 5D. 1. If the amount determined by Sections 5A, 5B and 5C is less than the "Limit of Insurance" named in the "Schedule Endorsement", at such location, the amount thus determined shall be the "Amount of Insurance under this form".

2. If the amount determined by Sections 5A, 5B and 5C is equal to or greater than the "Limit of Insurance" named in the "Schedule Endorsement" at such location, the amount of the "Limit of Insurance" so named shall be the "Amount of Insurance under this form".

6. It is understood, however, that the amount of insurance under all policies covering under this form at each location shall not exceed the sum set opposite such location under the heading "Limit of Insurance"; and that the proportion of such insurance covered under this policy shall be the percentage of such insurance set opposite such location under the heading "Percentage of Insurance Under This Policy"; and in no event shall such proportion exceed the sum set opposite such location under the heading "Limit of Liability Under This Policy".

7. The premium earned under this policy shall be determined and an adjustment thereof made on each anniversary date hereof, or upon termination or cancellation of this policy based on the average of values filed with this insurer, or its designated agent, as required in Paragraph 3; but no premium shall be charged on any values in excess of the amount named as the "Limit of Liability Under This Policy", nor on any value protected by non-provisional insurance against the hazards covered hereunder reported in accordance with Paragraph 3.

8. It shall be the privilege of the insured to make any changes desired by him in the last previously filed

statement required in Paragraph 3 but such changes shall not be effective unless made in writing and filed with this insurer or its designated agent before a loss shall have occurred.

9. It is agreed that in the event of a loss a premium for the unexpired portion of the policy year based upon the amount of loss paid hereunder shall at once be due and payable.

10. Subject to all the terms and conditions of this policy, loss, if any, to be adjusted with the insured named herein and payable to the insured or order endorsed hereon for purposes of collateral security; but this insurance is void as to any subsequent owners or purchasers of the stock described herein.

11. This insurance shall not inure in any event to the benefit of any carrier.

12. This insurance does not cover storage or elevator charges.

13. The liability of this company for any or all of the hazards covered under this policy shall not exceed the amount stated in this policy and shall be subject to all of the terms and conditions specified herein.

14. CO-INSURANCE CLAUSE: In consideration of the acceptance by the insured of the following Co-insurance Clause a reduction from the established premium rate of $.....to $..... has been allowed on this insurance:
In consideration of the rate and/or form under which this policy is written it is expressly stipulated and made a condition of this contract that the insured shall at all times maintain contributing insurance on each item of property insured by this policy to the extent of at least 100% of the actual cash value at the time of the loss, and that failing to do so, the insured shall to the extent of such deficit bear his, her or their proportion of any loss.

15. If this policy be divided into two or more items as shown by the Schedule Endorsement attached here-

to, all the foregoing conditions and limitations shall apply to each item separately.

16.
17.
18.
19.
20.
21.

Attached to and made part of policy No. 133021 of the MICHIGAN MILLERS MUTUAL FIRE INSURANCE COMPANY, Lansing, Michigan

Dated May 1, 1943 (GT) B. L. HEFLER
Agent

Selling Price Basis Form No. 156 M.M.F.P.B. 4-41